IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18-12-2007

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

W.P.No.5211 of 1999

J.Bagiyavathi .. Petitioner.

Versus

1.The General manager,
Telecom TRA Unit,
Salem-636 004.

2.The Accounts Officer,
O/o.General manager,
Telecom TRA Unit,
Salem-636 004.

3.The Sub-Divisional Officer,
Telecommunication,
Namakkal. .. Respondents.

Prayer: This writ petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to TRA/Def/NAM.2071/2, dated 9.3.1999 of the first respondent and quash the same.

For Petitioner : Mr.P.Mathivanan

For Respondents : Mr.M.Govindarajan

O R D E R

Heard Mr.P.Mathivanan, the learned counsel appearing on behalf of the petitioner and Mr.M.Govindarajan, the learned counsel appearing on behalf of the respondents.

2. It is stated by the petitioner that she had applied to the third respondent for a new telephone connection in the year 1997. From the date of its installation, the petitioner has been paying the telephone bills promptly, without any default. However, the first respondent without conducting any enquiry, issued the impugned communication, dated 9.3.99, asking the petitioner to pay an amount of Rs.27,034/-, which is the amount allegedly due, with regard to the

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telephone NAM.2071, which had been provided to M/s.Anna Biscuit Company at No.109, Main Road, Namakkal. In the impugned communication, it was stated that the petitioner's husband was a partner and brother-in-law of the deceased subscriber, Mathiyalagan. The petitioner had been asked to pay the dues on or before 17.3.1999, stating that on her failure to pay the said amount the petitioner's telephone with No.25251 would be disconnected without further notice. In the impugned communication, it is stated that the telephone No.NAM.2071 had been disconnected on 2.7.1990.

3. It is further submitted that inspite of the fact that the petitioner has nothing to do with telephone NAM.2071, the first respondent had threatened to disconnect the petitioner's telephone with telephone No.25251 for non-payment of the dues by Mathiyalagan for the telephone No.NAM.2071 and that too after nearly nine years from the date of the disconnection of the said telephone. It has also been stated that no notice had been issued or enquiry conducted before the impugned communication had been issued by the first respondent. In such circumstances, the petitioner preferred the present writ petition, invoking Article 226 of the Constitution of India.

4. In the counter affidavit filed on behalf of the respondents, ti has been stated that the petitioner provided with a new telephone connection during the year 1997, bearing No.NAM 25251. It has also been stated that the telephone No.NAM.2071 had been allotted to M/s.Anna Biscuit Company at No.109, Main Road, Namakkal. Janakiraman who is the husband of the petitioner was one of the partners in the said partnership firm. The telephone with No.NAM.2071 had been disconnected for non-payment of dues of Rs.27,034. Since the partners of the firm were severally and jointly responsible to clear the dues of the telephone allotted to the firm, the petitioner's husband is also responsible for the dues. Since the telephone with telephone No.NAM.2071 had been disconnected on 28.8.1991 for non-payment of dues, he had filed a complaint before the District Consumer Disputes Redressal Forum, Salem, in the year 1991, challenging the disconnection of his telephone. On dismissal of his petition, he had filed an appeal before the State Consumer Disputes Redressal Commission at Madras in A.P.No.48 of 1995. The said appeal had also been dismissed, holding that the partners of the partnership firm are jointly and severally responsible to clear the dues of the telephone allotted to the firm, rejecting the contention of the petitioner that he had already left the partnership firm. Therefore, the first respondent had the connection No.TRA/Def/NAM.2071/2, dated 9.3.99.

5. The learned counsel appearing on behalf of the respondents had submitted that the petitioner had been asked to pay the dues only as per Rule 443 of the Indian Telegraph Rules, 1951, wherein it has been stated that the telephone of the defaulting subscriber could be disconnected without notice for non-payment of the rent or other

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charges in respect of the telephone service provided.

6. The learned counsel appearing on behalf of the petitioner had submitted that since the petitioner had no connection with the partnership firm in the name of M/s.Anna Biscuit Company at Namakkal, the telephone NAM.25251 allotted to her cannot be disconnected. However, there was no notice or enquiry conducted before the impugned communication had been issued by the first respondent. Rule 443 of the Indian Telegraph Rules, 1951, relied on by the respondents, does not say that the telephone of the wife could be disconnected for the dues relating to the telephone allotted in the name of the husband. In such circumstances, the impugned communication of the first respondent, dated 9.3.99, is invalid, illegal and as such it cannot be sustained in the eye of law.

7. Based on the contentions of the learned counsel appearing on behalf of the parties concerned and on a perusal of the records available it is seen that no notice had been issued and no enquiry conducted with regard to the factual aspects relating to the claims made on behalf of the respondents. Further, the respondents have not shown that the impugned communication, dated 9.3.99 can be sustained in view of Rule 443 of the Indian Telegraph Rules, 1951. Further, the claim has been made by the first respondent after nearly 9 years after the disconnection of the telephone bearing No.NAM.2071, allotted to M/s.Anna Biscuit Company, Namakkal, stating that the petitioner's husband was using the telephone bearing No.NAM.25251 allotted in her name. In such circumstances, the impugned proceedings of the first respondent, dated 9.3.99 is quashed. Thus, the writ petition stands allowed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To
1.The General manager,
Telecom TRA Unit,
Salem-636 004.

2.The Accounts Officer,
O/o.General manager,
Telecom TRA Unit,
Salem-636 004.

3.The Sub-Divisional Officer,
Telecommunication,
Namakkal.

+ 1 CC To Mr.P.Mathivannnan, Advocate SR NO.75287

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